

1 As Plaintiff was previously informed, he does not have a constitutional right to appointed
2 counsel in this action, Rand v. Rowland, 113 F.3d 1520, 1525 (9th Cir. 1997), rev'd in part on other
3 grounds, 154 F.3d 952, 954 n.1 (9th Cir. 1998), and the court cannot require an attorney to represent
4 plaintiff pursuant to 28 U.S.C. § 1915(e)(1). Mallard v. U.S. Dist. Ct. for the S. Dist. of Iowa, 490
5 U.S. 296, 298 (1989). However, in certain exceptional circumstances the court may request the
6 voluntary assistance of counsel pursuant to section 1915(e)(1). Rand, 113 F.3d at 1525.

7 Without a reasonable method of securing and compensating counsel, the court will seek
8 volunteer counsel only in the most serious and exceptional cases. In determining whether
9 “exceptional circumstances exist, a district court must evaluate both the likelihood of success on the
10 merits [and] the ability of the [plaintiff] to articulate his claims pro se in light of the complexity of the
11 legal issues involved.” Id. (internal quotation marks and citations omitted).

12 The Court has considered Plaintiff’s renewed motion for the appointment of counsel, but again
13 does not find the required exceptional circumstances. As previously indicated, this Court is faced with
14 similar cases filed by prisoners proceeding in forma pauperis almost daily. These prisoners also must
15 prosecute claims without the assistance of counsel. Based on Plaintiff’s litigation of this action thus
16 far, there is no indication that Plaintiff is unable to articulate or diligently prosecute his claims at an
17 evidentiary hearing.

18 Furthermore, at this stage in the proceedings, the Court cannot make a determination that
19 Plaintiff is likely to succeed on the merits. Although the Court has determined Plaintiff has stated
20 some claims which may proceed in litigation, it has not determined that those claim have a likelihood
21 of being ultimately successful.

22 For the foregoing reasons, Plaintiff’s motion for the appointment of counsel, (ECF No. 142), is
23 HEREBY DENIED without prejudice.

24
25 IT IS SO ORDERED.

26 Dated: March 28, 2018

/s/ Barbara A. McAuliffe
27 UNITED STATES MAGISTRATE JUDGE